

## Message Text

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ACTION L-03

INFO OCT-01 EUR-12 ISO-00 FCSC-01 TRSE-00 EB-08 SS-15  
SP-02 INRE-00 CIAE-00 INR-10 NSAE-00 SSO-00 DRC-01  
/053 W

-----128411 062024Z /47/46

O 031549Z MAR 78  
FM AMCONSUL MUNICH  
TO SECSTATE WASHDC IMMEDIATE 9980  
AMEMBASSY BONN

UNCLAS SECTION 01 OF 02 MUNICH 01183

C O R R E C T E D C O P Y (EO, TAGS, SUBJECT LINES OMITTED)

E.O.. 11652: N/A  
TAGS: CPRS, PGOV, GW, GF, US  
SUBJECT: OVERLAPPING CLAIMS

SECSTATE PASS TO FOREIGN CLAIMS SETTLEMENT COMMISSION  
SECSTATE FOR L

BONN FOR PFUND

FROM CHARIG, AMCONSUL MUNICH

SUBJECT: OVERLAPPING CLAIMS

1. FURTHER TO LOU BONN 03420 AND 03669, WISH TO ADD  
FACTS AND COMMENTS TENDING TO SHOW ADVISABILITY OF  
GIVING GERMAN AUTHORITIES A GOOD WILL STATEMENT AS  
MENTIONED IN PARA. 7 OF BONN 03420.
2. US REPS POINTED OUT AND GERMAN REPS STATED THEY  
UNDERSTOOD THAT STATEMENT COULD NEITHER BE A GUARAN-  
TY THAT CLAIMANTS WHO MIGHT RECEIVE BOTH GERMAN AND  
AMERICAN COMPENSATION PAYMENTS WILL REIMBURSE GERMANS,  
NOR COULD IT CONSTITUTE COMMITMENT OR INVOLVEMENT OF  
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US GOV IN OBTAINING REIMBURSEMENT. GERMAN REPS  
STATED DESIRED DECLARATION COULD NOTE THAT US GOV  
WILL "DARAUF HINWIRKEN" (INDUCE OR PERSUADE) THAT  
CLAIMANTS HAVING RECEIVED COMPENSATION FROM BOTH  
SIDES WILL COMPLY WITH REIMBURSEMENT REQUIREMENT OF  
GERMAN LAWS. GERMAN REPS UNDERSTOOD THAT SUCH EN-  
COURAGEMENT OF US GOV TOWARDS CLAIMANTS "WILL BE

WITHIN THE FRAMEWORK OR LIMITATIONS OF US LAW AND LEGAL SYSTEM". THUS, SUCH STATEMENT WOULD INDEED BE FAR FROM COMMITMENT, PERHAPS MERELY A REMINDER TO CLAIMANTS AFFECTED THAT THEY OUGHT TO COMPLY WITH GERMAN LAWS THEY THEMSELVES HAVE INVOKED.

3. IT APPEARS ADVISABLE, AND EVEN IN SELF-INTEREST OF CLAIMANTS WHO HAVE REASON TO EXPECT COMPENSATION FROM BOTH SIDES, TO COMPLY OR PLEDGE COMPLIANCE WITH GERMAN REIMBURSEMENT REQUIREMENT. LET US FIRST CONSIDER THAT PURPOSE OF ACCOMMODATION WITH GERMAN AUTHORITIES IS LIFTING OF PAYMENT STOP FOR BENEFIT OF ALL RPT ALL AMERICAN CLAIMANTS UNDER GERMAN LAW, MAJORITY OF WHOM WILL NOT BE ENTITLED TO AWARDS BY FCSC. THEN LET US LOOK AT SMALL GROUP OF THOSE AMERICAN CLAIMANTS WHO SUBSEQUENTLY MAY RECEIVE AWARD AND PERHAPS PAYMENT PURSUANT TO PL 94-542. THOSE CLAIMANTS WILL BE IN WORSE POSITION, IF THEY FULLY PURSUE CLAIMS AND OBTAIN PAYMENTS UNDER BOTH AMERICAN AND GERMAN LAWS. ASSUME THEY OBTAIN PAYMENT FROM GERMANS NOW AND THEREAFTER AN AWARD FROM FCSC, THEN FCSC WILL DEDUCT SUCH PAYMENT FROM AWARD PURSUANT TO SECTION 605. ASSUME FURTHER THEY SUBSEQUENTLY RECEIVE SOME PAYMENT FROM THE GDR CLAIMS FUND, IF THERE EVER IS ANY. THEY HAVE TO REIMBURSE THE GERMANS, COULD INDEED BE COMPELLED TO DO SO IF THEY DO NOT COMPLY VOLUNTARILY (SEE 6 BELOW). THEY WOULD THEN BE WORSE OFF THAN THEY WOULD BE, HAD UNCLASSIFIED

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THEY NOT RECEIVED ANY GERMAN PAYMENT IN THE FIRST PLACE. THIS WOULD CONSTITUTE A "DOUBLE DEDUCTION", A CONFLICT WHICH IS "BUILT INTO" THE AMERICAN AND GERMAN LEGISLATION.

4. I COULD PERCEIVE OF SOME METHOD TO AVOID A DOUBLE DEDUCTION AND AT SAME TIME AMPLY SATISFY THE GERMAN AUTHORITIES SO THAT THEY WOULD LIFT THE CURRENT DECISION AND PAYMENT STOP: CLAIMANTS WHO HAVE RECEIVED PAYMENTS FROM THE FRG, AND WHOSE CLAIM BEFORE FCSC COMES UP FOR ADJUDICATION, MIGHT BE GIVEN A CHANCE TO AVOID OFFSET UNDER SECTION 605, I.E. POTENTIAL DOUBLE DEDUCTION, IF THEY FILED STATEMENT THAT

- A) THEY RECEIVED GERMAN PAYMENTS;
- B) THEY ARE OBLIGED TO REIMBURSE GERMANS IF THEY RECEIVE FUTURE COMPENSATION FOR SAME PROPERTY;
- C) SUCH REIMBURSEMENT IS MANDATORY AND GERMAN PAYMENT SHOULD THEREFORE BE CONSIDERED AS MERE ADVANCE, AS SOMETHING CLAIMANT DEFINITELY CANNOT RETAIN; IT SHOULD THEREFORE NOT REPEAT NOT BE DEDUCTED FROM FCSC AWARD;
- D) TO ASSURE US TREASURY BEFORE IT MAKES ANY PAYMENT TO SUCH CLAIMANT THAT CLAIMANT IS ENTITLED TO PAY-

MENT OF APPROPRIATE PERCENTAGE OF AWARD FREE OF DEDUCTION UNDER SECTION 605, CLAIMANT MUST SUBMIT PROOF THAT HE HAS REIMBURSED, OR ARRANGED TO REIMBURSE, GERMAN AUTHORITIES FOR THEIR EARLIER PAYMENT. OBVIOUSLY THIS SUGGESTION MAY BE SIMPLIFIED OR MODIFIED APPROPRIATELY. IT WILL IN THE END PROTECT AMERICAN CLAIMANTS FROM "DOUBLE DEDUCTION". THUS, FAR FROM FEELING IMPOSED UPON, CLAIMANTS WILL BE ANXIOUS TO GIVE SUCH UNDERTAKING, AS IT PROTECTS THEM FROM DOUBLE DEDUCTION.

5. ANY CLAIMANTS OR REPRESENTATIVES WHO REFUSE TO CONCEDE THAT THEY ARE NOT RPT NOT ENTITLED TO COLLECT UNDER GERMAN AND AMERICAN PROGRAMS WITHOUT REIMBURSEMENT PURSUANT TO UNCLASSIFIED

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GERMAN LAW SHOULD STATE SO CLEARLY. SUCH POINT OF VIEW

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ACTION L-03

INFO OCT-01 EUR-12 ISO-00 FCSC-01 EB-08 TRSE-00 SS-15

SP-02 CIAE-00 INR-10 NSAE-00 INRE-00 SSO-00 /052 W

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O 031549Z MAR 78

FM AMCONSUL MUNICH

TO SECSTATE WASHDC IMMEDIATE 9981

AMEMBASSY BONN

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WOULD APPEAR UNTENABLE; IT WOULD MAKE PROBLEM PRACTICALLY INSOLVABLE. I UNDERSTAND WE WISH THE GERMANS TO RESUME PAYMENTS PROMPTLY TO MANY ELDERLY CLAIMANTS, LARGE PERCENTAGE OF WHOM WILL NOT RPT NOT RECEIVE ANYTHING UNDER AMERICAN PROGRAM, BUT BY REASON OF THE STOP MIGHT HAVE TO WAIT FOR MANY YEARS FOR GERMAN PAYMENT JUST THE SAME, AND THAT WE DO NOT RPT NOT TRY TO PROTECT "DOUBLE DIPPERS" BENT ON ESCAPING PROVISIONS OF LAWS THEY INVOKED (SECS 20 A BFG; 21 A FG; 342 LAG). THERE IS NOTHING WRONG

WITH APPLYING UNDER BOTH LAWS, INDEED THAT IS RECOMMENDED;  
NOR WITH COLLECTING UNDER BOTH LAWS; BUT THOSE FEW WHO  
COLLECT TWICE SHOULD BE WILLING TO FACE THE GERMAN ADJUST-  
MENT, WHICH IS MANDATORY AND TO WHICH THEY MAY BE DEEMED  
TO HAVE CONSENTED WHEN THEY FILED UNDER GERMAN LAW. THE  
GERMAN ADMIN COURT DECISIONS, IF THEY BECOME FINAL, DIRECT  
THAT PAYMENT BE MADE TO ELIGIBLE CLAIMANTS WITHOUT DELAY,  
BUT BY NO MEANS DO THEY RULE OUT FUTURE REIMBURSEMENT TO  
BE MADE BY CLAIMANTS WHO RECEIVE PAYMENTS UNDER BOTH  
PROGRAMS (EVEN IF THEIR TOTAL IS WELL BELOW 100 PERCENT  
OF THE DAMAGE). ON THE CONTRARY, THE RATIONALE OF DECI-  
SIONS IS THAT GERMAN LAW REQUIRES CASES BE REOPENED AND  
REIMBURSEMENT OBTAINED FROM CLAIMANT, BUT AFTER RPT AFTER  
THEY RECEIVED PAYMENTS FROM BOTH SIDES, NOT WHEN SECOND  
PAYMENT IS MERE HOPE OR SPECULATION. CARRYING THOUGHTS  
TO LOGICAL END, ONE MUST RECOGNIZE THERE IS NO WAY AROUND  
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GERMAN RECOUPMENT, UNLESS GERMAN LAW IS CHANGED. LIFTING  
THE STOP IS ONE THING, PROTECTING CLAIMANTS AGAINST EVEN-  
TUAL RECOUPMENT IS QUITE ANOTHER.

6. INCIDENTALLY, THE CASE IN WHICH NY COURT IN 1962 HELD  
THAT GERMAN ADMINISTRATIVE BENEFITS UNJUSTIFIEDLY RETAINED  
BY AMERICAN CLAIMANT CAN RPT CAN BE RECOUPED BY GERMAN  
STATE GOVERNMENT IN NEW YORK COURT IS "REGIERUNGS-  
PRAESIDENT LAND NORD-RHEIN WESTFALEN V. ERICH ROSENTHAL  
(NY SUPR. COURT, APPELLATE DIVISION, 17 A.D. 2D 145).  
BETTS

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**To:** STATE BONN  
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